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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/320,349	05/26/1999	DONALD SCOTT WEDGE	019474-00010	4586

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EXAMINER

GRAHAM, ANDREW R

ART UNIT	PAPER NUMBER
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2615

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/320,349	Applicant(s) WEDGE, DONALD SCOTT	
	Examiner Andrew Graham	Art Unit 2615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: please see attached sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

AG

Andrew Graham
 571-272-7517

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Response to Arguments

Applicant's arguments filed 4/3/2006 have been fully considered but they are not persuasive.

On page 22, lines 2-4, the applicant has stated, "While Kinoshita allows for a participant to selective turn off components of the stereo signal, the terminal is still receiving the stereo audio signal". The examiner respectfully disagrees. Please see Figure 22. Control signals affect switches 7 and 9, enabling or disabling a user's or transmission and receipt of audio signals (col. 23, line 50-col. 24, line 16). These switches precede the outputs to the terminals via 22 and 11 (Figure 22 and col. 23, lines 4-14. Thus, an inhibited or excluded terminal is not still receiving the inhibited or excluded stereo signal.

On page 22, lines 5-7, the applicant has stated, "All of the independent claims, Claims 1, 10, 14 and 24-26, include the limitation that one of the sources does not receive stereo signals from the system". The examiner respectfully disagrees. The exact limitation is 'does not receive said stereo signals" (Claim 1). This limitation suggests that the 'at least one of said sources" does not receive a specific stereo signal (the 'said' stereo signal), but it does not prevent the same source from receiving other stereo signals as part of the applied reference, while yet anticipating the claimed invention. Furthermore, the monitoring or receipt of signals is dependent upon receiving a control signal designating one or more teleconferences to that are intended to be monitored. This dependency indicates that,

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upon no receipt of such a control signal, no conferences will be monitored and no stereo signals will be received (col. 24, lines 1-11). Thus, receiving no input stereo signals at a source, is yet an indicated and anticipated limitation, even if not a central or intended use of such an overall system, as suggested by the applicant's characterization of the Kinoshita reference in page 21 of the response.

On page 22, lines 7-8, the applicant has stated, "In other words, the system as set out in the Claims cannot be bi-directional as is required in the system of Kinoshita". The examiner respectfully disagrees. The claimed methods and apparatuses utilize the word 'comprising' and are thus properly construed as open-ended or inclusive. See MPEP 2111.3. As noted above, not receiving a specific or a 'said' stereo signal is not consistent in scope with not receiving 'any' stereo signals. Thus, as Kinoshita does, a system can ultimately be bi-directional and still anticipate the present methods and apparatuses as claimed.

On page 22, lines 8-10, the applicant has stated, "Claims cannot be bi-directional as required in the Kinoshita system. The source, which does not receive a stereo signal, has no option on whether to listen to the other sources" and "It can't as it does not have a bi-directional communication line". The examiner notes that the features upon which applicant relies (i.e., not having a bi-directional line) are not recited nor mandated in the rejected claim(s), as is noted above. Although the claims are interpreted in light of the

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specification, limitations from the specification are not read into the claims.

On page 23, lines 3-4, the applicant has stated, "Thus, all terminals have the ability, via bi-directional communication lines to hear and speak to other telecommunication participants". The examiner respectfully notes, however, that terminals also have the ability to not hear or not listen to other participants, through the control of switches such as 7 and 9 in Figure 22. This capability addresses and remains consistent with the claimed apparatuses and methods, which claims, to paraphrase, at least not listening to at least one stereo signal. Again, the claims is silent with regard to all stereo signals not being received by the pertinent 'at least one of said sources'.

On page 23, lines 11-14, the applicant has cited a passage from column 24 of Kinoshita, concluding "The user intends to monitor one or more teleconferences". The examiner respectfully submits, however, that this passage also supports the position that one or more conferences are intended not to be selected by the user, which is analogous and provides the basis of the anticipation rejection under 35 U.S.C. 102 that was previously applied and is hereby further maintained. This passage also further suggests the possibility of selecting no or zero teleconferences, so far as even selecting one requires the receipt of a control signal. This statement is indicative of the concept that, without the reception of a control signal, or a control signal not designating one or more teleconferences, zero teleconferences will be monitored and zero

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stereo signals will be received by the applicant. While potentially not the focus or main point underlying the disclosure of Kinoshita, such a concept is still a part of what the reference fairly teaches or suggests.

On page 23, lines 17-18, the applicant has stated, "The inclusion of a bi-directional communication line is not disclosed". The examiner respectfully submits that this point is moot, so far as such a concept is not indicated or addressed by the pending claim language. As applied in the final rejection and reiterated herein, the teachings of Kinoshita include the broadest reasonable interpretation of the methods and apparatuses as claimed, when such claims are considered in light of the specification.

On page 24, lines 6-7, the applicant has stated, "For reasons set out in the prior interview, and the documents submitted therein, it is submitted that Kinoshita does not disclose a continuous broadcast". The examiner respectfully disagrees. The pending claim language does not substantiate the applicant's intended definition of 'continuous' which was presented in the interview. So far the teachings of Kinoshita disclose a broadcast that is consistent with the broadest reasonable interpretation of the claimed 'a continuous broadcast', the teachings of Kinoshita anticipate such a claim limitation, as was applied in the final rejection.

On page 26, lines 3-5, the applicant alleges, "Kinoshita teaches away from both of these features. He requires connections via communications lines which are 'capable of interactive audio

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communications' (Kinoshita column 8, line 35), which push-to-talk radios are not". The examiner respectfully disagrees. The applicant's reasoning is unclear and unsubstantiated. A two way communication system, such as that of Slater, is still 'interactive' so far as two signals can be sent in different directions, even if not simultaneous. Push to talk based systems are still, at root, interactive. The argument for 'teaching away' is unpersuasive for at least this reason.

On page 26, lines 5-8, the applicant has also alleged, "Additionally Kinoshita teaches that the communications lines must be capable of sending at least two simultaneous signals (at least stereo) to each sound source terminal, describing K channels of audio signals being branched to each terminal , with 'K being an integer equal to or greater than 2' (column 3, line 45)". The examiner respectfully submits, however, that the teachings of Kinoshita also - in a different embodiment - suggest that such an output connection may not be necessary for a particular source terminal, so far as signals received by a terminal are based on a control signal. Again, the indication of Kinoshita is that, upon no receipt of a control signal designating terminals to be monitored, no signals will be received or routed to the terminal (col. 24, lines 1-11). The reference of Slater simply provides a concrete example of such a situation where such a form of two-directional (or even one-way) communication would be desirable. To remove half of two-directional communication line (to make it a one-way directional connection), as the applicant appears to

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be arguing (though again, it is not distinctly nor clearly claimed) simply becomes a matter of removal of parts, which the teachings of Kinoshita substantiate, based on the selective receipt of signals. To remove an unused connection, as is taught or at least suggested by Kinoshita, would be an obvious removal of parts, per MPEP 2144.04, which indicates that omission of an element and its function is obvious if the function of the element is not desired. The teachings of Kinoshita substantiate the concept, based on the receipt or non-receipt of control signals, as to why a two-way communication connection would not be desired, making the removal or exclusion of corresponding elements obvious.

On page 26, lines 8-10, the applicant has stated, "He teaches away from the monaural signals of aircraft radio communications, and he teaches away from the one-direction at a time transmission of signals". The examiner respectfully disagrees. Kinoshita clearly suggests the monaural input signal by virtue of the single input channel (microphone 51) at each input source (Figure 7, col. 7, lines 5-6). At best, Kinoshita is silent with respect to the one-direction at a time concept. Clearly, 'teaching away' cannot be construed from silence. It is respectfully submitted that the applicant has not provided evidence of this position, even including the citations which were addressed above. Arguments of counsel cannot take the Place of factually supported objective evidence.

The remaining passages of the applicant's response do not present arguments furthering or beyond those which have been addressed above.

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Accordingly, it is respectfully submitted that the above response addresses the applicant's response in its entirety, and ultimately, it is unpersuasive.


Daniel Swerdlow
Primary Examiner
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